IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A.No.1715 of 2003 (O&M)
Date of decision : 8.9.2006.

Mumtaz Ali .....Appellant

versus

Swaran Singh etc. .....Respondents

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present: Mr.Sameer Sachdeva. Advocate for the appellant

Mr.Vikas Singh, Advcoate for the respondent.

ORDER

HEMANT GUPTA, J (Oral)

C.M.No.8425-C of 2006.

CM is allowed as prayed for.

R.S.A.No.1715 of 2003.

The plaintiff is in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby his suit for declaration for correction of khasra girdawari for the years 1987-88, was dismissed.

It is the case of the plaintiff that he is lessee under the Punjab Wakf Board alongwith Swaran Singh and Alla Ditta and name of Bachan Singh has been wrongly included in the revenue record and therefore, the revenue record be corrected.

Earlier, the plaintiff has filed a suit for permanent injunction in the year 1989. The said suit for injunction was dismissed on 5.2.1994 (Exhibit P-7) and appeal against the said judgment was also dismissed on 5.3.1998 (Exhibit P-1) in which it has been been held that the plaintiff has failed to prove his possession over the suit land. The plaintiff-appellant thereafter filed a suit for injunction. The said suit was decreed on 6.3.1997 holding the plaintiff-appellant to be in possession of the suit land since 23.5.1995. Appeal against the said judgment was dismissed on 7.4.1999.

The plaintiff-appellant has filed the present suit for declaration on 23.12.1995, after his suit for permanent injunction and claiming possession in the year 1989 was dismissed. Both the Courts below have returned a concurrent finding of fact that in view of the previous judgment and decree Exhibit P-7, which is affirmed in appeal vide Exhibit P-1, the plaintiff cannot be claimed to be in possession of the land in the year 1989 as his suit for permanent injunction on the basis of his possession, was dismissed.

Learned counsel for the appellant has argued that on the basis of judgment and decree dated 7.4.1999, to contend that the plaintiff is entitled to declaration sought for, as his grievance is against the inclusion of name of Bachan Singh in the revenue record though the plaintiff is lessee in the Wakf land. In the said suit and appeal, a finding was recorded that the plaintiff is in possession of the suit land since 23.5.1995. The said judgment referred to is not relevant as the plaintiff has never been found to be in possession of the suit land in the year 1989. In an earlier judgment and decree, the plaintiff was not found to be in possession, consequently the suit was rightly dismissed as the plaintiff cannot claim declaration after a finding is returned that he was not in possession in the year 1989.

In view of the above, I do not find not find any illegality or irregularity in the finding recorded by the Courts below which may raise any substantial question of law in the second appeal, for consideration of this Court.

Dismissed.

(HEMANT GUPTA)
JUDGE

September 8, 2006.
**mohinder*